

**APPLICANT:**  
**Vance Gregory Hobbs and**  
**Christine Marie Hobbs**

**BEFORE THE**  
**ZONING HEARING EXAMINER**

**REQUEST: A variance pursuant to**  
**§ 267-23B(2) to allow an addition to maintain**  
**an average side yard less than the required 15"**  
**and a variance pursuant to § 267-35B,**  
**Table III to allow an average side yard less**  
**than the required 15' setback**

**FOR**  
**HARFORD COUNTY**  
**BOARD OF APPEALS**

**HEARING DATE: February 28, 2005**

**Case No. 5464**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Vance Gregory Hobbs and Christine Marie Hobbs

**LOCATION:** 1701 Bordeaux Court / Brandywine Farms  
Tax Map: 47 / Grid: 3E / Parcel: 0465 / Lot: 76  
Election District: Third (3<sup>rd</sup>)

**PRESENT ZONING:** RR / Rural Residential

**REQUEST:** A variance pursuant to § 267-23B(2) to allow an addition to maintain an average side yard with the width at one point being less than one half the required 15' setback and a variance pursuant to § 267-35B, Table III to allow an average side yard less than the required 15' setback.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

The Applicants own an improved 1.11 acre parcel within the Brandywine Farms subdivision of Fallston.

The Applicants, desiring to improve their property, planned for, obtained a building permit for, and began construction of a substantial addition to the north side of their home. The Applicants acted as their own general contractors on this addition which had been planned for almost six years. The Applicants hired a building designer to assist in its design. The site plan off which the designer worked was the drawing which had been given to the Applicants at the time they purchased their property. That drawing is marked as Applicant's Exhibit No. 1.

## **Case No. 5464 – Vance Gregory Hobbs and Christine Marie Hobbs**

Taking this plan to the Department of Inspections, Licensing and Permits, the Applicants were then given a building permit. The Applicants' testimony is that a clerk at the Department of Inspections, Licensing and Permits actually drew onto that plan the outlines of the proposed addition.

Unfortunately, as was subsequently discovered by the Applicants the drawing submitted with the permit application was incorrect, with the existing house being shown as about 28' from the property line, when the actual distance is about 39'. Conversely, the house is correspondingly closer to the northwestern property line than is shown on the drawing.

The Applicants testified that after the foundation had been installed, Harford County inspectors came onto the property for a normal inspection, and made an observation that the foundation did not appear to be properly located. After investigation it was determined that the foundation was much closer to the property line than had been shown on the plan submitted with the building permit application. The foundation was subsequently determined to be within 3-1/2' of the property line on an "as built" site drawing prepared by Highland Survey Associates, Inc. and attached to the Applicants' application as Attachment No. 3. The plan first submitted with the permit application showed the building addition located 19' from the property line.<sup>1</sup> The required setback is 15'. The Applicants assert that this error was caused by the erroneous site plan which was filed with the permit application, and on which their measurements were based.

The Applicants testified that they were not told to stop construction and, in fact, completed construction of the addition subsequent to learning of the problem. The Applicants assert that the addition is built too close to the property line because of the original, faulty, drawing.

The Applicants further testified that their lot is unique, having a pie shaped configuration, with the front of the lot being at a significant lower elevation than its rear. The property line is also planted with a tree buffer. This makes it difficult to establish a line of sight along the property line in question.

The Applicants were aware of the 15' setback requirement, and were also aware that the building line could be averaged so that they could come as close as 7-1/2' at the closest point.

---

<sup>1</sup> The drawing marked as Applicants' Exhibit 1 in the file, while not reproduced to exact scale, appears to be at about a 1:50 scale. However, no dimensions of the addition were noted on the plan. By measurement, it appears that the proposed addition was shown as about 44' in length, where as the "as built" drawing shows it at 36' in length. No explanation for the apparent discrepancy was offered.

**Case No. 5464 – Vance Gregory Hobbs and Christine Marie Hobbs**

In support of their argument of uniqueness of the property, the Applicants stated in their application that:

“The level topography of the property to the north side of the dwelling makes the addition more practicable. The steep slopes of the topography on the southern side of the property would require large amounts of fill material to allow for any new construction to blend with the current architecture and landscape of the residence. In some areas fill quantities in excess of 12 feet in height would be required to level the property. Such quantities would require the construction of substantial retaining structures to hold the fill on the property, and would require the creation of steep slopes to retain grade with the adjacent residence. These options would have adverse effects on esthetics of the residence, would cause significant changes in drainage patterns to down slope residences, and require the removal of established trees. In, addition the filling of the southern side of the property would require the removal of walk out basement access from the dwelling, which is a significant safety concern.”

The Applicants further testified, and submitted documentation to support, their position that the setback variance would not be a detrimental impact to their or the adjoining properties, and would enhance the neighborhood, if anything. The Applicants submitted letters that other residents had not objection to the proposed variance.

The Harford County Department of Planning and Zoning recommends approval of the requested variances.

“The Department find that the subject property is unique based on its shape and topography. The dwelling was placed in the middle of the lot because of the topography. There is a walkout basement located to the south side of the dwelling. The septic system is located to the front and there is an in-ground pool and well located to the rear. Therefore, the proposed location is the only practical area for the addition.”

No testimony or evidence was given in opposition.

**APPLICABLE LAW:**

§ 267-23B(2) of the Harford County Code states:

**Case No. 5464 – Vance Gregory Hobbs and Christine Marie Hobbs**

- (2) *Average side yard. The side yard width may be varied where the sidewall of a structure is not parallel with the side lot line. In such case, the average width of the side yard shall not be less than the otherwise-required minimum width; provided, however, that such side yard shall not be narrower at any point than one-half (½) the otherwise required minimum width or narrower than three (3) feet in all cases, except lot-line dwellings. Any minor offset, broken or irregular part of a structure, which is not in the same vertical plan as the portion of the sidewall of a structure nearest to the side lot line shall not be included in the computation of the average side yard width.”*

§ 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

- A. *Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*

(1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*

(2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

**Case No. 5464 – Vance Gregory Hobbs and Christine Marie Hobbs**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

It is difficult to understand why, once it was determined that the proposed addition was in significant violation of a required setback, the Applicants proceeded to ultimately finish the addition without first securing the necessary variance. Their testimony that they were never advised to cease construction is also difficult to understand.

The Applicants are requesting significant variances. They are required to maintain a 15' side yard setback. The Applicants are allowed to disturb that setback as a matter of right if they have an improvement which is not parallel to that side yard line. An improvement can violate the setback up to one-half of its width, provide the average distance between the wall of the improvement and the property line is at least equal to the setback requirement itself. Therefore, the Applicants could have the closest point of their addition to within 7-1/2' of the property line, but the average distance between the line and improvement must be 15'. The Applicants are in gross violation of these relatively benign requirements. The closest point is 3.3' away from the property line, and the average distance is not 15', but less than 10'. If the Applicants had stopped their construction at the time they first became aware of the problem, they would not now be faced with a situation where they may be forced to remove and relocate what is no doubt a very expensive improvement.

In support of their request, the Applicants argue that this situation was created by the existence of a faulty drawing (Applicants' Exhibit No. 1); and/or by the faulty drawing of the proposed improvement made by the Harford County Department of Inspections, Licensing and Permits Clerk; and/or by mistakes made by their building designer. The drawing marked as Applicants Exhibit No. 1, even though the dimensions are somewhat off because of a faulty scale, clearly show the proposed addition to be 19' from the property line. If the Applicants, who were their own general contractors, failed to determine the actual location of the property line, and the building is located as a result too close, then the error is their own, and no other. They in fact testified that it was difficult to establish the location of the property line. Difficulty in establishing a property line is, of course, no reason to disregard the absolute necessity of doing so when one is constructing such a major improvement.

A comparison of the original drawing utilized by the Applicants in their construction of the addition (Applicants Exhibit No. 1), with the site drawing which the Applicants obtained in preparation for this hearing which shows the actual location of the improvements (Attachment 3), verifies the Applicants testimony that the original drawing incorrectly shows the location of the house. The actual location of the house is approximately 10' farther removed from the southwestern property line and about 10' closer to the northwestern property line than shown on the faulty drawing. If the Applicants used the same incorrect dimensions to locate the addition, and did nothing to verify distances, the constructed addition would, of course, be closer than planned to the northwestern property line.

**Case No. 5464 – Vance Gregory Hobbs and Christine Marie Hobbs**

From the Applicants' testimony it is clear that their backyard is encumbered by both their pool, deck, well and septic system. The southern part of their property has topographical features which would make it impractical to construct an addition in that location. It is accordingly found, based upon the testimony of the Applicants that their property is constrained in such a way to make the only practical location for the addition to be the northern part of their property, where the addition was in fact constructed. It is further found that the addition constructed by the Applicants is similar to others which have no doubt been constructed in the neighborhood of the Applicants, and that no neighbor has expressed any opposition to the request.

The Hearing Examiner has great difficulty, however, with allowing the Applicants the variance when, if the Applicants had been properly aware of their property line and had taken normal and customary measures to stay off that property line, an addition of somewhat smaller dimensions could have been constructed without violating those setbacks and the variance requests would not now be necessary. The Applicants proffer they would suffer hardship by being forced to remove and reconstruct the addition if the variance were not granted. It could be argued, however, that the Applicants created their hardship by continuing to proceed with the construction even though they became aware, at a very early stage, that a variance would be necessary. It could further be argued that the Applicants should have been aware of the problem at an even earlier stage.

While conceding this to be an extraordinarily close case, it is found there is, in fact, an unusual configuration of the Applicants' property which limits the location of an addition to their home. It is further found that the Applicants, in using an incorrect drawing, were at least led to initially believe they could construct an addition at an improper location. It is further found that the variances would cause no adverse impact to any adjoining property owner.

**CONCLUSION:**

It is accordingly recommended that the proposed variances be granted, subject to the Applicants amending the existing permit to reflect the actual location of the addition.

Date: April 1, 2005

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner